



4510-29-P

## DEPARTMENT OF LABOR

Employee Benefits Security Administration

Exemptions from Certain Prohibited Transaction Restrictions

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Grant of Individual Exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: **2016-10, Royal Bank of Canada, D-11868; 2016-11, Northern Trust Corporation, D-11875; and, 2016-12, Extension of PTE 2015-15 involving Deutsche Bank AG, D-11879.**

**SUPPLEMENTARY INFORMATION:** A notice was published in the Federal Register of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In

addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

#### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011)<sup>**1**</sup> and

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<sup>**1**</sup> The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

based upon the entire record, the Department makes the following findings:

- (a) The exemption is administratively feasible;
- (b) The exemption is in the interests of the plan and its participants and beneficiaries; and
- (c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

**Royal Bank of Canada (together with its current and future affiliates, RBC or the Applicant)**

**Located in Toronto, Ontario, Canada**

**[Prohibited Transaction Exemption 2016-10;**

**Exemption Application No. D-11868]**

#### TEMPORARY EXEMPTION

##### Section I: Covered Transactions

Certain entities with specified relationships to Royal Bank of Canada Trust Company (Bahamas) Limited (RBCTC Bahamas) (hereinafter, the RBC QPAMs, as further defined in Section II(b)) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption (PTE) 84-14,<sup>2</sup> notwithstanding a judgment of conviction against RBCTC Bahamas for aiding and abetting tax fraud, to be entered in France in the District Court of Paris (the Conviction, as further defined in Section II(a)),<sup>3</sup> for a period of up to twelve months beginning

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<sup>2</sup> 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

<sup>3</sup> Section I(g) of PTE 84-14 generally provides that "[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a

on the date of the Conviction (the Conviction Date), provided that the following conditions are satisfied:

(a) The RBC QPAMs (including their officers, directors, agents other than RBC, and employees of such RBC QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of RBCTC Bahamas that is the subject of the Conviction (for purposes of this paragraph (a), "participate in" includes the knowing or tacit approval of the misconduct underlying the Conviction);

(b) The RBC QPAMs (including their officers, directors, agents other than RBC, and employees of such RBC QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction;

(c) The RBC QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction (for purposes of this paragraph

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5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of" certain felonies including income tax evasion, and aiding and abetting tax evasion.

(c), "participated in" includes the knowing or tacit approval of the misconduct underlying the Conviction);

(d) An RBC QPAM will not use its authority or influence to direct an "investment fund," (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA or the Code and managed by such RBC QPAM, to enter into any transaction with RBCTC Bahamas or engage RBCTC Bahamas to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of the RBC QPAMs to satisfy Section I(g) of PTE 84-14 arose solely from the Conviction;

(f) The criminal conduct that is the subject of the Conviction did not directly or indirectly involve the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA);

(g) RBCTC Bahamas has not provided nor will provide discretionary asset management services to ERISA-covered plans or IRAs, nor will it otherwise act as a fiduciary with respect to ERISA-covered plan and IRA assets;

(h) (1) Within four months of the date of the Conviction,

each RBC QPAM must develop, implement, maintain, and follow written policies (the Policies) requiring and reasonably designed to ensure that:

(i) The asset management decisions of the RBC QPAM are conducted independently of the management and business activities of RBCTC Bahamas;

(ii) The RBC QPAM fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs;

(iii) The RBC QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs;

(iv) Any filings or statements made by the RBC QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) The RBC QPAM does not make material misrepresentations or omit material information in its communications with such

regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients;

(vi) The RBC QPAM complies with the terms of this temporary exemption; and

(vii) Any violation of, or failure to comply with, an item in subparagraph (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance and the General Counsel (or their functional equivalent) of the relevant RBC QPAM, and an appropriate fiduciary of any affected ERISA-covered plan or IRA where such fiduciary is independent of RBC; however, with respect to any ERISA-covered plan or IRA sponsored by an "affiliate" (as defined in Section VI(d) of PTE 84-14) of RBC or beneficially owned by an employee of RBC or its affiliates, such fiduciary does not need to be independent of RBC. An RBC QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered or when it reasonably should have known of the noncompliance (whichever is earlier),



and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Within four months of the date of the Conviction, each RBC QPAM must develop and implement a program of training (the Training), conducted at least annually, for all relevant RBC QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this temporary exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing;

(i) Effective as of the effective date of this temporary exemption, with respect to any arrangement, agreement, or contract between an RBC QPAM and an ERISA-covered plan or IRA for which an RBC QPAM provides asset management or other discretionary fiduciary services, each RBC QPAM agrees:

(1) To comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited

transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan and IRA;

(2) Not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the RBC QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(3) Not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the RBC QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of RBC;

(4) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the RBC QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM), with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all

other investors as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the RBC QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of RBC; and

(7) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such RBC QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g)

of PTE 84-14 other than the Conviction.

Within six (6) months of the date of the Conviction, each RBC QPAM will: Provide a notice of its obligations under this Section I(i) to each ERISA-covered plan and IRA for which an RBC QPAM provides asset management or other discretionary fiduciary services;

(j) The RBC QPAMs comply with each condition of PTE 84-14, as amended, with the sole exceptions of the violations of Section I(g) of PTE 84-14 that are attributable to the Conviction;

(k) Each RBC QPAM will maintain records necessary to demonstrate that the conditions of this temporary exemption have been met, for six (6) years following the date of any transaction for which such RBC QPAM relies upon the relief in the temporary exemption;

(l) During the effective period of this temporary exemption, RBC: (1) immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that RBC or an affiliate enters into with the U.S Department of Justice, to the extent such DPA or NPA involves conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA; and (2) immediately provides the Department any information requested by the Department, as

permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreements; and

(m) An RBC QPAM will not fail to meet the terms of this temporary exemption, solely because a different RBC QPAM fails to satisfy a condition for relief under this temporary exemption, described in Sections I(c), (d), (h), (i), (j), and (k).

## Section II: Definitions

(a) The term "Conviction" means the potential judgment of conviction against RBCTC Bahamas for aiding and abetting tax fraud to be entered in France in the District Court of Paris, French Special Prosecutor No. 1120392066, French Investigative Judge No. JIRSIF/11/12;

(b) The term "RBC QPAM" means a "qualified professional asset manager" (as defined in section VI(a)<sup>4</sup> of PTE 84-14) that relies on the relief provided by PTE 84-14 and with respect to which RBCTC Bahamas is a current or future "affiliate" (as

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<sup>4</sup> In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

defined in section VI(d) of PTE 84-14);

(c) The term "RBCTC Bahamas" means Royal Bank of Canada Trust Company (Bahamas) Limited, a Bahamian "affiliate" of RBC (as defined in section VI(c) of PTE 84-14);

(d) The terms "ERISA-covered plan" and "IRA" mean, respectively, a plan subject to Part 4 of Title I of ERISA and a plan subject to section 4975 of the Code; and

(e) The term "RBC" means Royal Bank of Canada, together with its current and future affiliates.

**Effective Date:** This temporary exemption is effective for the period beginning on the Conviction Date until the earlier of: the date that is twelve months following the Conviction Date; or the effective date of a final agency action made by the Department in connection with an application for long-term exemptive relief for the covered transactions described herein.

#### SUPPLEMENTARY INFORMATION

On October 12, 2016, the Department of Labor (the Department) published a notice of proposed temporary exemption in the Federal Register at 81 FR 70562, proposing that certain entities with specified relationships to RBCTC Bahamas could

continue to rely upon the relief provided by PTE 84-14 (49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010)), notwithstanding a judgment of conviction against RBCTC Bahamas for aiding and abetting tax fraud, to be entered in France in the District Court of Paris (the Conviction, as further defined in Section II(a)),<sup>5</sup> for a period of up to twelve months beginning on the date of the Conviction.

The Department is today granting this temporary exemption in order to protect ERISA-covered plans and IRAs from certain costs and/or investment losses that may arise to the extent entities with a corporate relationship to RBCTC Bahamas lose their ability to rely on PTE 84-14 as of the Conviction Date, as described in the proposed temporary exemption. The Department is considering proposing longer-term relief for RBC QPAMs to rely on PTE 84-14 notwithstanding the Conviction, in Application No. D-11912. The

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<sup>5</sup> Section I(g) of PTE 84-14 generally provides that "[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of" certain felonies including income tax evasion, and aiding and abetting tax evasion.

relief in this temporary exemption provides the Department more time to consider whether longer-term relief is warranted.

No relief from a violation of any other law is provided by this temporary exemption, including any criminal conviction described in the proposed temporary exemption. Furthermore, the Department cautions that the relief in this temporary exemption will terminate immediately if, among other things, an entity within the RBC corporate structure is convicted of a crime described in Section I(g) of PTE 84-14 (other than the Conviction) during the effective period of the temporary exemption. While such an entity could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this temporary exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the temporary exemption.

#### WRITTEN COMMENTS

The Department invited all interested persons to submit

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written comments and/or requests for a public hearing with respect to the notice of proposed temporary exemption, published on October 12, 2016. All comments and requests for hearing were due by October 19, 2016. During the comment period, the Department received written comments from RBC and from The Clearing House. Although the Department has, for the most part, revised the proposed temporary exemption in the manner requested by RBC, the Department cautions that it may decline to include those revisions in any decision to grant more permanent relief.

*RBC's Comment*

RBC seeks several revisions to the conditions set forth in the proposed temporary exemption. First, RBC states that Section I(f) of the proposed temporary exemption may be unintentionally broad. As proposed, that condition states: "No entities holding assets that constitute the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) were involved in the criminal conduct that is the subject of the Conviction." RBC seeks to revise the condition to read: "The criminal conduct that is the subject of the Conviction did not directly or indirectly involve the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-

covered plan) or section 4975 of the Code (an IRA)." The Department has decided to revise the condition in the manner requested by RBC.

Next, RBC notes that Section I(h) of the proposed temporary exemption requires that each RBC QPAM "immediately:" develop, implement, maintain and follow certain written policies; and develop and implement a program of training. RBC seeks a period of up to four months following the date of its impending conviction to meet these requirements. The Department agrees that four months is a reasonable period of time with which to comply with the requirement of Section I(h) and has revised the condition accordingly.

RBC seeks another change to Section I(h)(1)(i), through the deletion of the bolded language, "The asset management decisions of the RBC QPAM are conducted independently of the management and business activities of **RBC, including** RBCTC Bahamas. RBC represents that it has neither committed, nor been accused of committing, a crime. The Department has revised the condition accordingly.

RBC also seeks to change the start date of the notice requirement set forth in Section I(i), such that each RBC must provide such notice within six months of the Conviction Date,

rather than within six months of the date of publication of this granted temporary exemption. The Department concurs with this request, and has revised the temporary exemption accordingly.

RBC seeks deletion of the requirement in Section I(i) that requires each RBC QPAM to separately warrant in writing its obligations to ERISA-Covered Plans and IRAs. While the Department has made such revision for purposes of the limited relief herein, the Department re-emphasizes, as noted above, that it may decide to propose more permanent relief that does not contain this revision.

RBC seeks deletion of requirement set forth in Section I(i)(6) that, each RBC QPAM agrees: "Not to include exculpatory provisions disclaiming or otherwise limiting liability of the RBC QPAM for a violation of such agreement's terms." The Department declines to make such deletion, but has revised the condition to read: "Not to include exculpatory provisions disclaiming or otherwise limiting liability of the RBC QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of RBC."

RBC notes that, in addition to the asset managers identified in the proposed exemption, the following managers are owned in

whole or in part by RBC: BlueBay Asset Management USA, LLC; City National Bank; City National Rochdale, LLC; City National Securities, Inc.; Convergent Wealth Advisors, LLC; LMCG Investments, LLC; Mid-Continent Capital, L.L.C.; and Symphonic Financial Advisors LLC be added to the list of primary U.S. bank and U.S. registered adviser affiliates in which RBC owns a significant interest. Three additional managers are owned in part but not currently controlled by RBC: Matthews International Capital Management, LLC; SKBA Capital Management, LLC; and O'Shaughnessy Asset Management, LLC. Further, RBC believes that Footnote 16 of the proposed exemption implies that the Hong Kong investigation is connected to RBCTC Bahamas' alleged conduct that is the subject of the French prosecution described in Section II(a) of the proposal. According to RBC, the Hong Kong investigation is entirely unrelated to the matter that is the subject of the French prosecution described in Section II(a).

Condition (1) set forth in the proposed exemption provided that during the effective period of this temporary exemption, neither RBC nor any affiliate enters into a Deferred Prosecution Agreement (a DPA) or a Non-Prosecution Agreement (an NPA) with the U.S Department of Justice, in connection with conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA.

RBC sought to reserve its right to comment on this condition in connection with the Department's consideration of more permanent relief. The Department has nonetheless revised condition (1) such that it now reads: During the effective period of this temporary exemption, RBC: (1) immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that RBC or an affiliate enters into with the U.S Department of Justice, to the extent such DPA or NPA involves conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA; and (2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreements. *The Clearing House Comment*

The Clearing House Association L.L.C. (TCH) submitted a comment that expresses concern regarding condition (1) in Section I of the proposed temporary exemption. As noted above, the Department has revised that condition. The Department will continue to consider TCH's comment in connection with its consideration of more permanent relief for RBC.

After giving full consideration to the record, the Department has decided to grant the temporary exemption, as described above. The complete application file (Application No.

D-11868) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this temporary exemption, refer to the notice of proposed temporary exemption published on October 12, 2016 at 81 FR 70562.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Mpras Vaughan of the Department, telephone (202) 693-8565. (This is not a toll-free number.)

**Northern Trust Corporation (together with its current and future affiliates, Northern or the Applicant)**

**Located in Chicago, Illinois**

**[Prohibited Transaction Exemption 2016-11;**

**Exemption Application No. D-11875]**

#### TEMPORARY EXEMPTION

##### Section I: Covered Transactions

Certain entities with specified relationships to Northern Trust Fiduciary Services (Guernsey) Ltd. (NTFS) (hereinafter, the Northern QPAMs, as further defined in Section II(b)) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption 84-14 (PTE) 84-14,<sup>6</sup> notwithstanding a judgment of conviction against NTFS for aiding and abetting tax fraud, to be entered in France in the District Court of Paris (the Conviction, as further defined in Section II(a)),<sup>7</sup> for a period of up to twelve months beginning on the

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<sup>6</sup> 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

<sup>7</sup> Section I(g) of PTE 84-14 generally provides that "[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a

date of the Conviction (the Conviction Date), provided that the following conditions are satisfied:

(a) The Northern QPAMs (including their officers, directors, agents other than Northern, and employees of such Northern QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of NTFS that is the subject of the Conviction (for purposes of this paragraph (a), "participate in" includes the knowing or tacit approval of the misconduct underlying the Conviction);

(b) The Northern QPAMs (including their officers, directors, agents other than Northern, and employees of such Northern QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction;

(c) The Northern QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction (for purposes of this

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5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of" certain felonies including income tax evasion, and aiding and abetting tax evasion.



paragraph (c), "participated in" includes the knowing or tacit approval of the misconduct underlying the Conviction);

(d) A Northern QPAM will not use its authority or influence to direct an "investment fund," (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA or the Code and managed by such Northern QPAM, to enter into any transaction with NTFS or engage NTFS to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of the Northern QPAMs to satisfy Section I(g) of PTE 84-14 arose solely from the Conviction;

(f) No entities holding assets that constitute the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) were involved in the criminal conduct that is the subject of the Conviction;

(g) NTFS has not provided nor will provide discretionary asset management services to ERISA-covered plans or IRAs, nor will it otherwise act as a fiduciary with respect to ERISA-covered plan and IRA assets;

(h) (1) Within four months of the date of the Conviction,

each Northern QPAM must develop, implement, maintain, and follow written policies (the Policies) requiring and reasonably designed to ensure that:

(i) The asset management decisions of the Northern QPAM are conducted independently of the management and business activities of NTFS;

(ii) The Northern QPAM fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs;

(iii) The Northern QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs;

(iv) Any filings or statements made by the Northern QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) The Northern QPAM does not make material misrepresentations or omit material information in its

communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients;

(vi) The Northern QPAM complies with the terms of this temporary exemption; and

(vii) Any violation of, or failure to comply with, an item in subparagraph (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance and the General Counsel (or their functional equivalent) of the relevant Northern QPAM, and an appropriate fiduciary of any affected ERISA-covered plan or IRA where such fiduciary is independent of Northern; however, with respect to any ERISA-covered plan or IRA sponsored by an "affiliate" (as defined in Section VI(d) of PTE 84-14) of Northern or beneficially owned by an employee of Northern or its affiliates, such fiduciary does not need to be independent of Northern. A Northern QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when

discovered or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Within four months of the date of the Conviction, Northern QPAM must develop and implement a program of training (the Training), conducted at least annually, for all relevant Northern QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this temporary exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing;

(i) Effective as of the effective date of this temporary exemption, with respect to any arrangement, agreement, or contract between a Northern QPAM and an ERISA-covered plan or IRA for which a Northern QPAM provides asset management or other discretionary fiduciary services, each Northern QPAM agrees:

(1) To comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA; to refrain from

engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan and IRA;

(2) Not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the Northern QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(3) Not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the Northern QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Northern;

(4) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Northern QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM), with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically

designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the Northern QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Northern Trust; and

(7) To indemnify and hold harmless the ERISA-covered plan or

IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such Northern QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the Conviction.

Within six (6) months of the date of the Conviction, each Northern QPAM will: Provide a notice of its obligations under this Section I(i) to each ERISA-covered plan and IRA for which a Northern QPAM provides asset management or other discretionary fiduciary services;

(j) The Northern QPAMs comply with each condition of PTE 84-14, as amended, with the sole exceptions of the violations of Section I(g) of PTE 84-14 that are attributable to the Conviction;

(k) Each Northern QPAM will maintain records necessary to demonstrate that the conditions of this temporary exemption have been met, for six (6) years following the date of any transaction for which such Northern QPAM relies upon the relief in the temporary exemption;

(l) During the effective period of this temporary exemption, Northern Trust: (1) immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-

Prosecution Agreement (an NPA) that Northern Trust enters into with the U.S Department of Justice, to the extent such DPA or NPA involves conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA; and (2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreements; and

(m) A Northern QPAM will not fail to meet the terms of this temporary exemption, solely because a different Northern QPAM fails to satisfy a condition for relief under this temporary exemption, described in Sections I(c), (d), (h), (i), (j), and (k).

## Section II: Definitions

(a) The term "Conviction" means the potential judgment of conviction against NTFS for aiding and abetting tax fraud to be entered in France in the District Court of Paris, French Special Prosecutor No. 1120392066, French Investigative Judge No. JIRSIF/11/12;

(b) The term "Northern QPAM" means a "qualified



professional asset manager" (as defined in section VI(a)<sup>8</sup> of PTE 84-14) that relies on the relief provided by PTE 84-14 and with respect to which NTFS is a current or future "affiliate" (as defined in section VI(d) of PTE 84-14);

(c) The term "NTFS" means Northern Trust Fiduciary Services (Guernsey) ltd., an affiliate" of Northern (as defined in section VI(c) of PTE 84-14) located in Guernsey;

(d) The terms "ERISA-covered plan" and "IRA" mean, respectively, a plan subject to Part 4 of Title I of ERISA and a plan subject to section 4975 of the Code; and

(e) The term "Northern" means Northern Trust Corporation, together with its current and future affiliates.

**Effective Date:** This temporary exemption is effective for the period beginning on the Conviction Date until the earlier of: the date that is twelve months following the Conviction Date; or the

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<sup>8</sup> In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

effective date of a final agency action made by the Department in connection with an application for long-term exemptive relief for the covered transactions described herein.

#### SUPPLEMENTARY INFORMATION

On October 12, 2016, the Department of Labor (the Department) published a notice of proposed temporary exemption in the Federal Register at 81 FR 70562, proposing that certain entities with specified relationships to NTFS could continue to rely upon the relief provided by PTE 84-14 (49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010)), notwithstanding a judgment of conviction against NTFS for aiding and abetting tax fraud, to be entered in France in the District Court of Paris (the Conviction, as further defined in Section II(a)),<sup>9</sup> for a period of up to twelve months beginning on the date of the Conviction.

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<sup>9</sup> Section I(g) of PTE 84-14 generally provides that "[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of" certain felonies including income tax evasion, and aiding and abetting tax evasion.

The Department is today granting this temporary exemption in order to protect ERISA-covered plans and IRAs from certain costs and/or investment losses that may arise to the extent entities with a corporate relationship to NTFS lose their ability to rely on PTE 84-14 as of the Conviction Date, as described in the proposed temporary exemption. The Department is considering proposing longer-term relief for Northern QPAMs to rely on PTE 84-14 notwithstanding the Conviction, in Application No. D-11911.

The relief in this temporary exemption provides the Department more time to consider whether longer-term relief is warranted.

No relief from a violation of any other law is provided by this temporary exemption, including any criminal conviction described in the proposed temporary exemption. Furthermore, the Department cautions that the relief in this temporary exemption will terminate immediately if, among other things, an entity within the Northern corporate structure is convicted of a crime described in Section I(g) of PTE 84-14 (other than the Conviction) during the effective period of the temporary exemption. While such an entity could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this temporary exemption have

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been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the temporary exemption.

#### WRITTEN COMMENTS

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed temporary exemption, published on October 12, 2016. All comments and requests for hearing were due by October 18, 2016. The Department received two written comments, one from Northern Trust, the other from Clearing House Association L.L.C. (TCH), both of which are described below.

Although the Department has revised, in part, the proposed exemption in the manner requested by Northern Trust, the Department cautions that it may decline to include such revisions in any decision to grant more permanent relief.

#### *Northern Trust Comment*

Northern Trust notes that Section I(h) of the proposed exemption requires that each Northern QPAM "immediately:"

develop, implement, maintain and follow certain written policies; and develop and implement a program of training. Northern Trust seeks a period of up to four months following the date of its impending conviction to meet these requirements. The Department agrees that four months is a reasonable period of time with which to comply with the requirement of Section I(h) and has revised the condition accordingly.

Northern Trust seeks another change to Section I(h)(1)(i), through the deletion of the bracketed language, "The asset management decisions of the Northern QPAM are conducted independently of the management and business activities of [Northern, including] NTFS [and Northern's non-asset management affiliates.]" Northern Trust represents that it has neither committed, nor been accused of committing, a crime. The Department has revised the condition accordingly.

Northern Trust seeks deletion of the requirement in Section I(i) that requires each Northern QPAM to separately warrant in writing its obligations to ERISA-Covered Plans and IRAs. While the Department has made such revision for purposes of the limited relief herein, the Department re-emphasizes, as noted above, that it may decide to propose more permanent relief that does not contain this revision.

Northern Trust seeks deletion of the requirement set forth in Section I(i)(6) that, each Northern QPAM agrees: "Not to include exculpatory provisions disclaiming or otherwise limiting liability of the Northern QPAM for a violation of such agreement's terms." The Department declines to make such deletion, but has revised the condition to read: "Not to include exculpatory provisions disclaiming or otherwise limiting liability of the Northern QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Northern Trust."

Condition (1) of the proposed exemption provided that neither Northern Trust nor any affiliate could enter into a Deferred Prosecution Agreement (a DPA) or a Non-Prosecution Agreement (an NPA) with the U.S Department of Justice, in connection with conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA. Northern Trust sought to reserve its right to comment on this condition in connection with the Department's consideration of more permanent relief. The Department has nonetheless determined to revise condition (1), to require that, during the effective period of this temporary exemption, Northern

Trust: (1) immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that Northern Trust enters into with the U.S Department of Justice, to the extent such DPA or NPA involves conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA; and (2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreements.

*The Clearing House Comment*

The Clearing House Association L.L.C. (TCH) submitted a comment that expresses concern regarding condition (1) in Section I of the proposed temporary exemption. Although the Department has revised condition (1) in the manner described above, the Department will continue to consider TCH's comment in connection with its consideration of more permanent relief for Northern Trust.

After giving full consideration to the record, the Department has decided to grant the temporary exemption, as described above. The complete application file (Application No. D-11875) is available for public inspection in the Public

Disclosure Room of the Employee Benefits Security Administration,  
Room N-1515, U.S. Department of Labor, 200 Constitution Avenue  
N.W., Washington, DC 20210.

For a more complete statement of the facts and  
representations supporting the Department's decision to grant  
this temporary exemption, refer to the notice of proposed  
temporary exemption published on October 12, 2016 at 81 FR 70569.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Mpras Vaughan of the  
Department, telephone (202) 693-8565. (This is not a toll-free  
number.)



**Extension of PTE 2015-15 (the Extension) involving Deutsche Bank  
AG (Deutsche Bank)**

**Located in Frankfurt, Germany**

**[Prohibited Transaction Exemption 2016-12;  
Exemption Application No. D-11879]**

EXEMPTION

*Section I: Covered Transactions*

Certain asset managers with specified relationships to Deutsche Bank (hereinafter, the DB QPAMs, as further defined in Section II(b)) shall not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption (PTE) 84-14,<sup>**10**</sup> notwithstanding a judgment of conviction against Deutsche Securities Korea Co., a South Korean affiliate of Deutsche Bank (hereinafter, DSK, as further defined in Section II(c)), entered on January 25, 2016 (the Korean Conviction, as

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<sup>**10**</sup> 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

further defined in Section II(a)),<sup>11</sup> provided that the following conditions are satisfied:

(a) The DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such DB QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of DSK that is the subject of the Korean Conviction;

(b) Any failure of the DB QPAMs to satisfy Section I(g) of PTE 84-14 arose solely from the Korean Conviction;

(c) The DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such DB QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction;

(d) A DB QPAM will not use its authority or influence to direct an "investment fund" (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA and managed by such DB QPAM to

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<sup>11</sup> Section I(g) of PTE 84-14 generally provides that "[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of" certain felonies including income tax evasion and conspiracy or attempt to commit income tax evasion.

enter into any transaction with DSK or engage DSK to provide additional services to such investment fund, for a direct or indirect fee borne by such investment fund regardless of whether such transactions or services may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e)(1) Each DB QPAM maintains and follows written policies (the Policies) requiring and reasonably designed to ensure that:

(i) the asset management decisions of the DB QPAM are conducted independently of Deutsche Bank's management and business activities; (ii) the DB QPAM fully complies with ERISA's fiduciary duties and ERISA and the Code's prohibited transaction provisions and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs; (iii) the DB QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; (iv) any filings or statements made by the DB QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such DB QPAM's knowledge at that time; (v) the DB QPAM does not make material

misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; (vi) the DB QPAM complies with the terms of this Extension; and (vii) any violations of or failure to comply with items (ii) through (vi) are corrected promptly upon discovery and any such violations or compliance failures not promptly corrected are reported, upon discovering the failure to promptly correct, in writing to appropriate corporate officers, the head of Compliance and the General Counsel of the relevant DB QPAM (or their functional equivalent), the independent auditor responsible for reviewing compliance with the Policies, and an appropriate fiduciary of any affected ERISA-covered plan or IRA that is independent of Deutsche Bank; however, with respect to any ERISA-covered plan or IRA sponsored by an "affiliate" (as defined in Section VI(d) of PTE 84-14) of Deutsche Bank or beneficially owned by an employee of Deutsche Bank or its affiliates, such fiduciary does not need to be independent of Deutsche Bank. DB QPAMs will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that they correct any instances of noncompliance promptly when

discovered or when they reasonably should have known of the noncompliance (whichever is earlier), and provided that they adhere to the reporting requirements set forth in this item (vii);

(2) Each DB QPAM maintains and follows a program of training (the Training), conducted during the effective period of this Extension, for relevant DB QPAM asset management, legal, compliance, and internal audit personnel (other than personnel who received training in a manner that meets the requirements of PTE 2015-15 within the prior 12 months); the Training must be set forth in the Policies and, at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions) and ethical conduct, the consequences for not complying with the conditions of this Extension, (including the loss of the exemptive relief provided therein), and prompt reporting of wrongdoing;

(f) (1) Each DB QPAM submits to an audit conducted by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code to evaluate the adequacy of, and compliance with, the Policies and Training described herein; the audit requirement must be incorporated in the Policies. The audit must cover the

period of time during which this Extension is effective, and must be completed no later than six (6) months after the period to which the audit applies;

(2) To the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and as permitted by law, each DB QPAM and, if applicable, Deutsche Bank, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems, business records, transactional data, workplace locations, training materials, and personnel;

(3) The auditor's engagement must specifically require the auditor to determine whether each DB QPAM has developed, implemented, maintained, and followed Policies in accordance with the conditions of this Extension and developed and implemented the Training, as required herein;

(4) The auditor's engagement shall specifically require the auditor to test each DB QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test a sample of the QPAM's transactions involving ERISA-covered plans and IRAs sufficient in size and nature to afford the auditor a reasonable basis to determine the operational compliance with the Policies and Training;

(5) On or before the end of the period described in Section I(f)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to Deutsche Bank and the DB QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report must include the auditor's specific determinations regarding the adequacy of, and compliance with, the Policies and Training; the auditor's recommendations (if any) with respect to strengthening such Policies and Training; and any instances of the respective DB QPAM's noncompliance with the written Policies and Training described in paragraph (e) above. Any determinations made by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective DB QPAM must be promptly addressed by such DB QPAM, and any actions taken by such DB QPAM to address such recommendations must be included in an addendum to the Audit Report. Any determinations by the auditor that the respective DB QPAM has maintained and followed sufficient Policies and Training shall not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the DB QPAM has complied with the requirements under

this subsection must be based on evidence that demonstrates the DB QPAM has actually maintained and followed the Policies and Training required by this Extension and not solely on a lack of evidence that the DB QPAM has violated ERISA;

(6) The auditor shall notify the respective DB QPAM of any instances of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the General Counsel or one of the three most senior executive officers of the DB QPAM to which the Audit Report applies certifies in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this Extension; addressed, corrected, or remedied any inadequacies identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this Extension and with the applicable provisions of ERISA and the Code;

(8) An executive officer of Deutsche Bank reviews the Audit Report for each DB QPAM and certifies in writing, under penalty of perjury, that such officer has reviewed each Audit Report;



(9) Each DB QPAM provides its certified Audit Report to the Department's Office of Exemption Determinations (OED), 200 Constitution Avenue, NW, Suite 400, Washington DC 20210, no later than 45 days following its completion, and each DB QPAM makes its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such DB QPAM;

(10) Each DB QPAM and the auditor will submit to OED (A) any engagement agreement(s) entered into pursuant to the engagement of the auditor under this Extension, and (B) any engagement agreement entered into with any other entities retained in connection with such QPAM's compliance with the Training or Policies conditions of this Extension, no later than three (3) months after the effective date of the Extension (and one month after the execution of any agreement thereafter);

(11) The auditor shall provide OED, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: the audit plan, audit testing, identification of any instances of noncompliance by the relevant DB QPAM, and an explanation of any corrective or remedial actions taken by the applicable DB QPAM; and

(12) Deutsche Bank must notify the Department at least 30 days prior to any substitution of an auditor, except that no such replacement will meet the requirements of this paragraph unless and until Deutsche Bank demonstrates to the Department's satisfaction that such new auditor is independent of Deutsche Bank, experienced in the matters that are the subject of the Extension, and capable of making the determinations required of this Extension.

Notwithstanding the above, this audit requirement will be deemed met to the extent the Department issues more permanent relief that expressly supersedes this paragraph (f), and the terms of such new audit requirement have been met;

(g) With respect to each ERISA-covered plan or IRA for which a DB QPAM provides asset management or other discretionary fiduciary services, each DB QPAM agrees: (1) to comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA, and refrain from engaging in prohibited transactions that are not otherwise exempt; (2) not to waive, limit, or qualify the liability of the DB QPAM for violating ERISA or the Code or engaging in prohibited transactions; (3) not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the DB QPAM

for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Deutsche Bank; (4) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the DB QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such restrictions are applied consistently and in like manner to all such investors; and (5) not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors. Within two (2) months of the date of publication of this notice of Extension in the

Federal Register, each DB QPAM will provide a notice to such effect to each ERISA-covered plan or IRA for which a DB QPAM provides asset management or other discretionary fiduciary services in reliance on PTE 84-14, unless such notice was previously provided consistent with PTE 2015-15;

(h) Each DB QPAM will maintain records necessary to demonstrate that the conditions of this Extension have been met, for six (6) years following the date of any transaction for which such DB QPAM relies upon the relief in the Extension;

(i) The DB QPAMs comply with each condition of PTE 84-14, as amended, with the sole exception of the violation of Section I(g) that is attributable to the Korean Conviction;

(j) The DB QPAMs will not employ any of the individuals that engaged in the spot/futures-linked market manipulation activities that led to the Korean Conviction;

(k) Deutsche Bank disgorged all of its profits generated by the spot/futures-linked market manipulation activities of DSK personnel that led to the Korean Conviction;

(l) Deutsche Bank imposes internal procedures, controls, and protocols on DSK designed to reduce the likelihood of any recurrence of the conduct that is the subject of the Korean Conviction, to the extent permitted by local law;

(m) DSK will not provide fiduciary or QPAM services to ERISA-covered Plans or IRAs, and will not otherwise exercise discretionary control over plan assets;

(n) No DB QPAM is a subsidiary of DSK, and DSK is not a subsidiary of any DB QPAM;

(o) The criminal conduct of DSK that is the subject of the Korean Conviction did not directly or indirectly involve the assets of any plan subject to Part 4 of Title I of ERISA or section 4975 of the Code; and

(p) A DB QPAM will not fail to meet the terms of this Extension solely because a different DB QPAM fails to satisfy the conditions for relief under this Extension described in Sections I(d), (e), (f), (g), (h), (i) and (j).

## *Section II: Definitions*

(a) The term "Korean Conviction" means the judgment of conviction against DSK entered on January 25, 2016, in Seoul Central District Court, relating to charges filed against DSK under Articles 176, 443, and 448 of South Korea's Financial Investment Services and Capital Markets Act for spot/futures-linked market price manipulation;

(b) The term "DB QPAM" means a "qualified professional

asset manager" (as defined in section VI(a)<sup>12</sup> of PTE 84-14) that relies on the relief provided by PTE 84-14 and with respect to which DSK is a current or future "affiliate" (as defined in section VI(d) of PTE 84-14). For purposes of this Extension, Deutsche Bank Securities, Inc. (DBSI), including all entities over which it exercises control; and Deutsche Bank AG, including all of its branches, are excluded from the definition of a DB QPAM; and

(c) The term "DSK" means Deutsche Securities Korea Co., a South Korean "affiliate" of Deutsche Bank (as the term "affiliate" is defined in section VI(c) of PTE 84-14).

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<sup>12</sup> In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

**EFFECTIVE DATE:** This Extension will be effective for the period beginning October 24, 2016 and ending on the earlier of: April 23, 2017 or the effective date of a final agency action made by the Department in connection with Exemption Application No.

D-11856.**13**

#### SUPPLEMENTARY INFORMATION

On October 12, 2016, the Department of Labor (the Department) published a notice of proposed extension in the Federal Register at 81 FR 70577, proposing that certain entities with specified relationships to DSK could continue to rely upon the relief provided by PTE 84-14 (49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010)), notwithstanding the Korean Conviction.

The Department is today granting this Extension in order to protect ERISA-covered plans and IRAs from certain costs and/or investment losses that may arise to the extent entities with a corporate relationship to DSK lose their ability to rely on PTE

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**13** In this regard, as noted below, the Applicant has requested substantially similar relief to the relief described herein, but on a more permanent basis.

84-14 as of the expiration of PTE 2015-15. The relief in this Extension provides the Department more time to consider whether more permanent relief is warranted.

No relief from a violation of any other law is provided by this Extension, including any criminal conviction described in the proposed extension or in PTE 2015-15. Furthermore, the Department cautions that the relief in this Extension will terminate immediately if, among other things, an entity within the Deutsche Bank corporate family is convicted of a crime described in Section I(g) of PTE 84-14 during the effective period of the Extension. While such an entity could apply for a new exemption in that circumstance, the Department would not be obligated to grant that exemption. The terms of this Extension have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the Extension.

#### WRITTEN COMMENTS

The Department invited all interested persons to submit written comments and/or requests for a public hearing with



respect to the notice of proposed extension, published on October 12, 2016, at 81 FR 70577. All comments and requests for hearing were due by October 19, 2016. Because of the abbreviated comment period, the Department will consider comments received within a reasonable period of time after October 19, 2016 in connection with its consideration of long-term exemptive relief for the DB QPAMs in connection with Exemption Application No. D-11908, described above. During the comment period, the Department received two written comments, one from the independent auditor and one from Deutsche Bank AG, both of which are described below.

Although the Department has, for the most part, revised the proposed exemption in the manner requested by Deutsche Bank AG, the Department cautions that it may decline to include those revisions in any decision to grant more permanent relief.

#### *Independent Auditor's Comment*

Section I(f)(1) of the proposed extension requires that the audit, along with the report, must be completed no later than three months after the period to which the audit relates. In its comment, the auditor requested that the audit requirement described in Section I(f)(1) of the proposed extension be modified to require that the audit report must be completed no

later than six months after the period to which the audit relates. The auditor explains that, during the course of its audit, it needs to review an extensive amount of materials, relevant systems and training, and digest the information provided in response to various requests for information. Furthermore, the auditor states that it will take a significant amount of time to develop and review follow-up questions based upon its initial analysis of the materials and systems; and the report that the auditor provides to the Department needs to be robust, comprehensive and detailed.

The Department views a rigorous, transparent, and comprehensive audit as essential to ensuring that the conditions for exemptive relief described herein are followed by the DB QPAMs. As such, the Department has extended the deadline by which point the audit must be completed from three months following the period to which the audit applies to six months.

#### *Deutsche Bank's Comment*

Deutsche Bank seeks several changes and/or clarifications to the proposed extension. First, Deutsche Bank requests that the Department revise the proposed exemption in a manner that would potentially extend the duration of this Extension. The

Department declines to extend this duration of the Extension in the manner requested by Deutsche Bank, but notes that it is currently considering proposing more permanent relief pursuant to Application Numbers D-11879 and D-11908.

Regarding the audit, Deutsche Bank seeks to extend the certification period set forth in Section I(f)(9) from 30 days to 45 days. The Department has revised the condition accordingly. Deutsche Bank also requests that the timing of the audit be adjusted in the same manner sought by the auditor. This adjustment is discussed above.

Deutsche requests certain changes to the training requirement described in Section I(e)(2) of the proposed extension. Deutsche Bank seeks to coordinate that condition with the training requirement set forth in PTE 2015-15, such that duplicative training is not required over a short period of time. The Department has revised Section I(e)(2) to exclude training for personnel who received training in a manner that meets the requirements of PTE 2015-15 within the prior 12 months.

Deutsche Bank also seeks changes to the notice requirement described in Section I(g) of the proposed exemption. Deutsche Bank seeks to add the following bracketed language, such that Section I(g) reads: "Within two (2) months of the date of

publication of this notice of Extension in the Federal Register, each DB QPAM will provide a notice to such effect to each ERISA-covered plan or IRA for which a DB QPAM provides asset management or other discretionary fiduciary services [in reliance on PTE 84-14], unless such notice was previously provided consistent with PTE 2015-15." The Department has revised the condition accordingly.

Deutsche Bank requests an adjustment to certain restrictions the proposed exemption places on DSK. In this regard, Deutsche Bank seeks to add the following bracketed language, and to delete the following italicized language, such that Section I(m) reads: "DSK has not, and will not, provide [discretionary asset management services or other discretionary] fiduciary *or QPAM* services to ERISA-covered Plans or IRAs, and will not otherwise exercise discretionary control over plan assets." The Department declines Deutsche Bank's request, but has revised the condition to more clearly require that this condition is intended to be met prospectively, not retroactively.

Deutsche Bank also seeks clarification that for purposes of the Extension, the auditor, and not the QPAMs, must provide the relevant workpapers to the Department. The Department agrees with that interpretation of the condition.

In its letter to the Department, Deutsche Bank states that footnotes 38 and 42, which reference tax-related crimes, are unrelated to Deutsche Bank's application and should be deleted. Deutsche Bank also requests that the Department note for the record that "Deutsche Bank identified Mr. Ripley both as an employee of DBSI and a subject of the Korean case on numerous prior occasions, including as far back as 2011, as well as more recently."

After giving full consideration to the entire record, the Department has decided to grant the Extension. The complete application file for the Extension (Exemption Application No. D-11879), including all supplemental submissions received by the Department, as well as the application file for PTE 2015-15 (Exemption Application No. D-11696), are available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this Extension, refer to the notice of proposed extension, published on October 12, 2016, at 81 FR 70577.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Ness of the  
Department, telephone (202) 693-8561. (This is not a toll-free  
number.)

## GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 24th day of October, 2016.

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Lyssa E. Hall  
Director of Exemption  
Determinations  
Employee Benefits Security  
Administration  
U.S. DEPARTMENT OF LABOR

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